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In re Application of:
PORTNYKH, Vladimir, et al.
U.S. Application No.: 10/559,374
PCT No.: PCT/KR2004/000489
Int'l Filing Date: 10 March 2004
Priority Date: 07 June 2003
Attorney's Docket No.: Q76716
For: APPARATUS AND METHOD FOR
ORGANIZATION AND INTER-
PRETATION OF MULTIMEDIA DATA
ON A RECORDING MEDIUM

DECISION ON PETITION
(37 CFR 1.47(a))

This decision is issued in response to applicants' petition under 37 CFR 1.47(a) filed 22 November 2006. Applicants have submitted \$130 as the petition fee; however, the appropriate petition fee is \$200. Deposit Account No. 19-4880 will be charged the additional \$70 required to complete the petition fee.

BACKGROUND

On 10 March 2004, applicants filed international application PCT/KR2004/000489. The international application claimed a priority date of 07 June 2003, and it designated the United States. On 16 December 2004, the International Bureau (IB) communicated a copy of the international application to the United States Patent and Trademark Office (USPTO). The deadline for submission of the basic national fee was thirty months from the priority date, i.e., 07 December 2005.

On 06 December 2005, applicants filed a Transmittal Letter for entry into the U.S. national stage accompanied by, among other materials, payment of the basic national fee and a declaration executed by three of the four inventors (the declaration was not executed by inventor Vladimir PROTNYKH).

On 14 April 2006, the United States Designated/Elected Office (DO/EO/US) mailed a Notification Of Acceptance (Form PCT/DO/EO/903) indicating that the requirements of 35 U.S.C. 371(c)(1), (c)(2), and (c)(4) were satisfied as of 06 December 2005. On the same date, a filing receipt was mailed identifying 06 December 2005 as the date under 35 U.S.C. 371(c).

On 22 November 2006, applicants filed the petition considered herein, requesting acceptance of the application without the signature of co-inventor Vladimir PRTNYKH, whom applicants assert cannot be reached or located after diligent effort.

DISCUSSION

A grantable petition under 37 CFR 1.47(a) must be accompanied by: (1) the fee under 37 CFR 1.17; (2) a statement of the last known address of the non-signing inventor; (3) an oath or declaration by the other inventors on behalf of the other inventors on behalf of themselves and the non-signing inventor; and (4) factual proof that the inventor refuses to execute the application or cannot be reached after diligent effort.

Applicants here have submitted the required petition fee, and the petition sets forth the last known addresses of the non-signing inventors. Accordingly, items (1) and (2) are satisfied.

Regarding item (3), section 409.03(a) of the Manual of Patent Examining Practice (MPEP) states that:

An oath or declaration signed by all the available joint inventors with the signature block of the nonsigning inventor(s) left blank may be treated as having been signed by all the joint inventors on behalf of the nonsigning inventor(s), unless otherwise indicated.

Here, applicants filed, on 06 December 2005, a declaration executed by three of the four inventors and including an unsigned signature box identifying the non-signing inventor. This declaration may be treated as having been executed by the available inventors on their own behalf and on behalf of the non-signing inventor. Item (3) is therefore satisfied.

Regarding item (4), the petition asserts that the non-signing inventor has refused to execute the declaration. Where it is asserted that an inventor has refused to execute the application papers, section 409.03(d) of the MPEP states that a "copy of the application papers should be sent to the last known address of the nonsigning inventor, or, if the nonsigning inventor is represented by counsel, to the address of the nonsigning inventor's attorney." The MPEP also requires "a statement of facts by the person who presented the inventor with the application papers and/or to whom the refusal was made." Here, applicants have provided firsthand statements from Tracy Johnson and Darryl Mexic, with accompanying documentary support, demonstrating that a copy of the complete application was forwarded to the inventor, and that the inventor expressly refused to sign the required declaration. Item (4) is therefore satisfied.

Based on the above, applicants have satisfied all the requirements for a grantable petition under 37 CFR 1.47(a).

CONCLUSION

Applicants' petition under 37 CFR 1.47(a) is **GRANTED**.

The application is accepted without the signature of inventor Vladimir PORTNYKH.

A notice of the acceptance of the application will be published in the Official Gazette, and a letter informing the inventors of the application will be forwarded to the non-signing inventor at his last-known address, as set forth in the petition.

It is noted that, based on the granting of the present petition, the Notification Of Acceptance and filing receipt mailed 14 April 2006 correctly identify the date under 35 U.S.C. 371(c)(1), (c)(2), and (c)(4) as 06 December 2005.



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